



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

B2

File: WAC 98 169 50361 Office: California Service Center Date:

IN RE: Petitioner:
Beneficiary:

AUG 7 2000

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly
Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an Elvis Presley impersonator. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international

recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Counsel asserts that the petitioner received the [REDACTED] [REDACTED] This is the highest International Award available in this industry." The petitioner submits three out-of-focus photographs of an Elvis Presley figurine, approximately five to six inches tall, which is mounted on a square base bearing an illegible two-word inscription (possibly the name "Elvis Presley"). On each of the photographs the petitioner has written "First Prize - Paris - 1996." These photographs establish, at most, the petitioner's possession of an Elvis Presley figurine.

An uncertified translation of a May 1996 newspaper article describes the contest at which the petitioner won the above prize. There is no evidence that first prize in the competition "is the highest International Award available in this industry" as counsel claims. Other documents in the record suggest that the competition was held in conjunction with the 31st anniversary of a club with an Elvis Presley theme.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

Counsel asserts that the petitioner is a member of the [REDACTED] [REDACTED] known as [REDACTED] from the acronym of its French name, [REDACTED] While [REDACTED] is certainly international in scope, its name suggests that its constituent members are not individuals, such as the petitioner, but rather organizations. Furthermore, there is nothing in the record to explain how an individual (or organization) becomes a member of [REDACTED] or what qualifications one must possess to do so.

The petitioner is a member of the [REDACTED] based in Paris, France. Counsel asserts that one "[m]ust be [a] very highly regard[ed] Elvis performer to be a member." Other documents in the record (including the petitioner's membership card) refer to the [REDACTED] as an Elvis Presley fan club. Fan clubs, in general, require at most the payment of dues and some level of

dedication to the celebrity or celebrities in question. The only membership requirement set forth in the record for this club is the submission of either 50 or 100 francs (depending on the level of membership desired) along with five stamped envelopes.

The petitioner is also a member of the Musicians Union. From its name, this organization appears to be a trade union rather than an association with highly exclusive membership requirements.

To satisfy this criterion, the petitioner must submit first-hand documentation of the associations' membership requirements. It cannot suffice for the petitioner simply to establish membership and then claim (personally or through counsel) that these associations have strict entry requirements. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner submits several newspaper articles about him and his work (mostly interviews and record reviews) along with evidence of various television appearances. The record does not establish the circulation of the publications or the viewership of the television broadcasts.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

Counsel states that the petitioner has judged competitions in Paris and Yugoslavia, but the record offers no support for this assertion. Counsel states that newspaper articles in the record offer corroboration, but counsel fails to specify which articles do so; review of these articles yields no useful evidence.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Counsel asserts "[o]riginal songs written by [the petitioner] in the 'Elvis' style have gone silver." Such evidence demonstrates

commercial success, but not that the petitioner's contributions are nationally or internationally recognized as having major significance. A separate criterion, below, covers commercial success in the performing arts; if such success were synonymous with contributions of major significance, then it would be redundant for two separate criteria to exist in this fashion. Furthermore, most if not all music critics would agree that record sales (or lack thereof) are not always a reliable indicator of artistic significance (or lack thereof).

Counsel, elsewhere, has maintained that Elvis Presley impersonation is a field distinct from general rock and roll singing. This being the case, an album of original material is not a contribution to the field of Elvis Presley impersonation. In a field of endeavor dedicated to duplicating performances by another artist, it is not clear how much room exists for originality. If, on the other hand, the petitioner seeks consideration of his own new material, he must subject it to comparison against rock and roll in general rather than against the narrower field of Elvis Presley impersonations.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

Counsel asserts that the petitioner's stage and television performances, as well as newspaper articles about the petitioner, satisfy this criterion. A musical performance, however, is not a scholarly article, and an article about the petitioner by another writer is not evidence of the petitioner's authorship. Public performances and media coverage fall under other criteria. This criterion is intended primarily for researchers and others who produce highly technical writings.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Counsel contends that the petitioner's recorded works satisfy this criterion, although counsel does not identify the artistic exhibitions or showcases at which the petitioner's work has purportedly appeared. This criterion refers essentially to museum display of works by visual artists.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Counsel indicates that the petitioner has played such a role for production and television companies, but he does not elaborate. The petitioner must establish both the critical nature of his role, and the distinguished reputation of the establishments. The

criterion becomes so broad as to be meaningless if every televised or recorded singer satisfies it.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

[REDACTED] general director of [REDACTED] the artist's agency which represented the petitioner in his native country, states that the petitioner "was [the] highest paid singer in our house in the last five years." This letter indicates that the petitioner was the highest paid performer at a single talent agency, but it does not extrapolate to a national or international level.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Counsel cites a "[l]isting of all recordings [and] number of recordings sold." A list prepared by the petitioner or counsel amounts to a claim rather than evidence to support that claim. Furthermore, the burden is on the petitioner to show not only how many records he has sold, but how those sales rank compared to others in the field. The petitioner has received one silver record, but he has not shown how common such silver records are within the industry, as compared to the gold, platinum, or multi-platinum records earned by top-selling artists.

According to the petitioner's list, his highest-selling recording was the cassette album [REDACTED], which sold 32,000 copies. The petitioner offers no audited figures to confirm this number, or to show that this level of sales is particularly high in Yugoslavia.

Beyond the above criteria, the petitioner has submitted letters from several witnesses in the United States. [REDACTED] entertainment consultant at [REDACTED] and [REDACTED] states that he "was very impressed" by tapes of the petitioner's performances, and that the petitioner "has a great talent and [is] without a doubt much better than the majority of Elvis impersonators." [REDACTED] does not state that the petitioner has achieved national acclaim in the U.S., but rather cites factors which "will influence his chances of success."

Talent agents and casino officials attest, in separate letters, that they believe that the petitioner is sufficiently talented that he "will have no problem finding work" in Nevada.

The director denied the petition, stating that the evidence does not establish national or international acclaim. The director specifically noted the absence of evidence to establish the

importance of the petitioner's 1996 award from Paris, his memberships, and his level of commercial success.

On appeal, counsel asserts that the director regarded the petitioner "as a singer and entertainer and compares him to other[s] in that industry. This is incorrect. The field of endeavor is . . . very small, that is, 'Elvis Presley' impersonators." Counsel asserts that the petitioner has established eligibility by reaching the top of the admittedly very small field of Elvis Presley impersonators. One of the petitioner's albums, however, consists for the most part of original songs by the petitioner, sung in his native language rather than in English. Singing songs which Elvis Presley never sang or even heard, in a language which he almost certainly did not speak or understand, does not clearly fit well into the category of Elvis Presley impersonation.

Whether or not Elvis Presley impersonation is a field of endeavor distinct from singing, the regulations demand national or international acclaim in the alien's field. It cannot suffice simply to show that the petitioner is among the more successful Elvis Presley impersonators, if that success has not produced a variety of concrete evidence of national or international acclaim. In other words, one could conceivably reach "the very pinnacle of the profession" (counsel's words) by being more successful than anyone else in the field, but still not be nationally or internationally known. There is no guarantee in the statute or regulations that every conceivable field of endeavor will produce individuals who qualify for classification as "extraordinary."

The petitioner submits several letters on appeal, mostly copies of previously submitted letters. Two letters are from clients who had hired the petitioner to perform at a gala and a beauty pageant, and who assert that the petitioner truly captured the essence of Elvis Presley's performances. None of the witnesses, however, claims or proves that the petitioner is a national or international celebrity.

An article from the [REDACTED] headlined "Elvis entertains Historical/Archaeological Society," describes the petitioner's appearance before that group in July 1998. This article asserts that the petitioner "was awarded the best European Elvis Impersonator title in Paris" and lists other achievements, but cites no source for this information. The article was published after the petition was filed, and contains several references to the petitioner's attempts to secure permanent resident status. Any information provided to the newspaper by the petitioner himself, who by this time was actively attempting to demonstrate his acclaim in the field, necessarily lacks objectivity.

The petitioner has garnered sustained media coverage since the early 1990s in Yugoslavia, although it is still not clear whether this coverage was predominantly local or national in character. The petitioner has produced no useful information about the prize he won in Paris or his memberships in associations. The petitioner, in general, has shown only that his work has won some level of attention, accompanied by the implied but unproven claim that almost no other Elvis Presley impersonators receive that level of attention.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as an Elvis Presley impersonator to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent and has enjoyed success impersonating Elvis Presley, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. It has not been shown that the petitioner's entry would substantially benefit prospectively the United States. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.